

**FLATHEAD COUNTY, MONTANA
BOARD OF ADJUSTMENT
RULES OF PROCEDURE
GENERAL GOVERNING RULES**

The Board of Adjustment shall be governed by the provisions of all applicable state statutes, local laws, ordinances, resolutions and these Board Rules. Robert's Rules of Order, 10th Edition, as revised, shall serve as guidelines for Board proceedings, except as specified otherwise by these rules.

AUTHORITY

The Flathead County Board of Adjustment was created on April 15, 1977 by action of the Flathead County Commissioners in accordance with Flathead County Resolution #254 and Montana state law Sections 76-2-221 through 76-2-226 Montana Code Annotated.

POWERS AND DUTIES

1. The Board has the powers and duties granted it pursuant to Title 76, Chapter 2, part 2, of the Montana State Law and assigned to it by the Board of County Commissioners including, but not limited to, the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any resolution or zoning regulation.
2. The Board has the power to hear and decide special exceptions to the terms of the zoning resolution upon which said board is required to pass under such resolution.
3. The Board has the power to authorize upon appeal in specific cases such variance from the terms of the resolution as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the resolution will result in unnecessary hardship and so that the spirit of the resolution shall be observed and substantial justice done.
4. The Board in exercising the above-mentioned powers, may, in conformity with the provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

OFFICERS AND DUTIES

1. Chair and Vice-Chair

The Board shall elect annually from its members by a majority vote a Chair and Vice-Chair who may be elected to succeed themselves. The Chair, or in his/her absence or

incapacity, the Vice-Chair shall decide all points of order or procedure and may administer oaths, and compel the attendance of witnesses.

2. The election of the Chair and Vice-Chair shall be held at the first regular meeting of the Board each year. Both Chair and Vice-Chair shall have the same right to act on matters before the Board as other members, including the right to make and second motions. The Chair and Vice-Chair from the preceding year shall continue to act in that capacity until a new Chair and Vice-Chair are elected.

3. Secretary

The Zoning Administrator or his designee shall act as Secretary. The Secretary shall keep all records, give notice, conduct all correspondence of the Board and supervise the clerical work of the Board. The Secretary shall keep a minute book of the proceedings of each meeting and each hearing which shall include the vote of each member on each question or, if absent or failing to vote, indicating such fact; the names and addresses of all witnesses, a summary of the facts on which the decision is based, and the decision rendered, and other official actions of the Board.

MEMBERSHIP

1. The Board shall consist of five (5) members, each to be appointed for a term of two (2) years and removable for cause by the board of county commissioners upon written charges and after public hearing.
2. Any resignation by a member shall be accepted by the County Commission. The commission shall direct the Planning & Zoning Office to advertise for the vacancy of the unexpired term of that member.
3. Appointments shall be made by the Board of County Commissioners.

MEETINGS

1. Quorum:

A quorum shall consist of three (3) voting members of the Board. The concurring vote of three (3) members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official; to decide in favor of the applicant on any matter upon which it is required to pass under any such resolution; or to effect any variation in such resolution.

2. Time of Meetings:

- a. Regular meetings shall be held on the first Tuesday of each month at 6:00 P.M., in the Conference Room of the Earl Bennett Building or at such other hour and

location as the Chair or Zoning Administrator may designate. The first regular meeting of each calendar year shall constitute the annual organizational meeting of the Board.

- b. Special meetings may be called by the Chair at any time provided that at least 48 hours notice shall be given before a special meeting is held. The Chair shall call a special meeting with 10 days of receipt of a written request by at least two members of the Board

3. Place of Meetings:

The regular and Special Meetings of the Board shall be held in the 2nd Floor Conference Room in the Earl Bennett Building, 1035 First Avenue West, Kalispell, or in any other place designated by the Chair. The Chair, either prior to or during the meeting, may change the location of the meeting because of unforeseen reasons such as non-availability of the meeting room or overcrowding.

4. Cancellation of Meetings:

Whenever there are no applications for variance, administrative appeals, or applications for conditional use permits, or other pertinent business to be considered at a regular meeting, the Zoning Administrator may dispense with such meeting by so notifying each member at least 48 hours prior to the time set for such meeting.

5. Order of Business:

Unless otherwise voted, the order of business at regular and Special Meetings shall be:

- a. Call to Order and Roll Call.
- b. Approval of the Minutes of the Previous Meeting(s).
- c. Action on Held Cases.
- d. Public Hearing and Action on New Cases.
- e. Old Business.
- f. New Business (Public Comment).
- g. Adjournment.

6. Voting and Disqualification of Members:

All matters shall be decided by roll call vote. Decisions on matters requiring public hearings and which reverse any order, requirement, decision or determination made by the Zoning Administrator, or to decide in favor of the applicant any matter upon which the Zoning Administrator is required to determine under any such regulation or to grant any variance from the requirements of such regulations, or any other matter, shall be decided by an affirmative vote of not less than three (3) members.

No member of the Board shall sit as a member during the hearing, participate in Board discussion or vote on any matter in which he/she shall be personally or financially interested, either directly or indirectly. No member of the Board shall represent clients before the Board. Such determinations shall be made on the basis of applicable Montana Statutes 2-2-104, 2-2-105 and 2-2-121, attached herewith.

PUBLIC HEARINGS

1. Matters Requiring Public Hearings:

A public hearing shall be required in all matters involving an appeal from any order, requirement, decision or determination by the Zoning Administrator arising from the enforcement of the Zoning Regulations; an application for variance from the terms of the Zoning Regulations; an application for a conditional use permit as specified in the Zoning Regulations; or a question involving the interpretation of the Zoning Regulations.

2. Notice of Hearings:

No appeal or application shall be decided until after due notice has been given and a public hearing has been held thereon. Due notice of a hearing shall be as follows:

- a. By publication of a notice thereof once in one official newspaper of general circulation in the county at least fifteen (15) days before the date of hearing.
- b. The Board shall mail notice of the hearing to the appellant or applicant or his/her attorney or agent at least ten (10) days before the date of hearing.
- c. The Board shall also mail notices of the hearing to all property owners within 150 feet of the premises affected by the application or appeal at least fifteen (15) days prior to the hearing.

3. Amendments, Withdrawals:

The application may not be amended unless such amendment is allowed by the Zoning Administrator. The applicant may withdraw his/her application anytime prior to the date of public hearing, but if the application is withdrawn, the fee shall not be refunded.

4. Conduct for all Public Hearings:

Any person may appear in person, by agent or attorney at any public hearing, and/or submit written comments prior to or at the hearing. Any person wishing to comment shall be recognized by the Chair and shall give his or her name and address. The Chair shall have the discretion to limit public comment, shall assure an orderly hearing and shall take necessary steps to maintain the order and decorum of the hearing at all times. The Chair shall reserve the right to terminate or adjourn the hearing in the event the

discussion becomes unruly or unmanageable. The order of proceedings in the hearing of each case at a public hearing shall be as follows:

- a. Reading of the public notice for the hearing by the Chair
- b. Staff Report
- c. Presentation by applicant
- d. Public Comment in favor or in opposition of the application/appeal.
- e. Rebuttals by the applicant/appellant or his/her agent
- f. Rebuttals by staff

The Chair of the Board may require any witness to swear or to affirm that his or her statements of fact are true. The Board may set a reasonable time limit for the receipt of public testimony.

5. Lack of Quorum:

All comments at a scheduled public hearing shall be received and recorded. If the Board lacks a quorum, the hearing shall be continued to the next regular meeting or to a special meeting. The date, time and place of the meeting in which the hearing will be continued shall be announced at the meeting for which the hearing was scheduled.

6. Rehearing:

No request for a reconsideration of a decision shall be accepted at any time, if it appears that no substantial change in facts, evidence, or conditions has occurred in regard to the neighborhood. Whether or not a change in facts, evidence, or conditions has occurred shall be determined by the Zoning Administrator before the application is accepted and placed on the calendar.

FILING

1. Time Limit for Appeals:

An appeal must be made within thirty (30) days after the action of the Zoning Administrator which is being appealed.

2. Filing of Appeals or Applications:

The appeal or application shall be filed with the Zoning Administrator at the Flathead County Planning and Zoning Office. Appeals, applications for conditional use permits, and applications for variance shall be accompanied by an accurate and intelligible plan or plans drawn to a suitable scale. A non-refundable fee as established by the Flathead

County Commissioners shall be included with the application or appeal. Checks or money orders shall be made payable to the Flathead County Planning and Zoning Office. Appeals or applications shall be signed by the property owner(s) or an authorized agent.

3. Calendar:

The appeal or application shall be placed on the calendar of the Board of Adjustment when the Board has substantial factual information to hear the case.

DECISIONS

1. Form of Decisions:

All decisions of the Board of Adjustment shall be by motion. The basis for the determination of each application or appeal and a detailed summary of the facts upon which the determination is made shall be recorded in the decision and shall constitute a part of the record thereof. In the case of variances, the decisions shall state the exceptional difficulty or unusual hardship upon which the application was based and which the Board found present. The decision shall also state in detail what conditions and safeguards, if any, are required.

2. Filing of Decision:

The decision of the Board shall become final on the date of entry of such order with the Zoning Administrator and serving of a copy of its decision and notice of filing with the applicant/appellant or his/her attorney or agent.

AMENDMENTS

These rules may be amended at any regular meeting by an affirmative vote of not less than three voting members of the Board, provided that such amendment has been presented in writing to each member of the Board at least 48 hours preceding the meeting at which the vote is taken.

Approved September 1, 2009